

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Date of Decision: 28.07.2023

Appeal No. 730 of 2022

M/s Vatika Ltd. registered address at Unit No.A-002, INXT
City Centre, Ground Floor, Block A, Sector 83, Vatika
India Next, Gurugram Haryana 122 012

Appellant/Promoter

Versus

Vikram Yadav, resident of VPO Mohammadpur Ahir,
Tehsil Tauru, District Mewat (Nuh) (Haryana)

Respondent/Allottee

Appeal No.803 of 2022

M/s Vatika Ltd. registered address at Unit No.A-002, INXT
City Centre, Ground Floor, Block A, Sector 83, Vatika
India Next, Gurugram Haryana 122 012

Appellant/Promoter

Versus

Vikram Yadav, resident of VPO Mohammadpur Ahir,
Tehsil Tauru, District Mewat (Nuh) (Haryana)

Respondent/Allottee

CORAM:

Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta

Chairman
Member (Judicial)
Member (Technical)

Appeals No.730 and 803 of 2022

Present: Mr. Venket Rao, Advocate,
for the appellant

Mr. Abdul Sattar, Advocate,
for the respondent.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

By this order we are disposing of the aforesaid two appeals bearing Appeal No.730 of 2022 titled as “M/s Vatika Ltd. v. Vikram Yadav” and Appeal No.803 of 2022 titled as “M/s Vatika Ltd. v. Vikram Yadav” arising out of order dated 03.11.2020 passed in Complaint No.85 of 2020 passed by the Haryana Real Estate Regulatory Authority, Gurugram (for short, the Authority) and the order dated 28.09.2022 passed in Complaint No.E/1430/2021/85/ 2020 passed by the Adjudicating Officer of the Authority. The respondent-allottee had filed the execution before the Adjudicating Officer of the Authority for executing the order dated 03.11.2020 in Complaint No.No.E/1430/2021/85/2020. Therefore, both the appeals are interrelated. The appellant has taken up similar issues in both the above said appeals, the facts and issues being same, therefore, both the appeals are being disposed of by one consolidated order. To dictate the

Appeals No.730 and 803 of 2022

orders facts are being taken from appeal No.730 of 2022 titled as “M/s Vatika Ltd. v. Vikram Yadav”.

2. The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act 2016 (further called as, ‘the Act’) by the appellant/promoter against impugned order dated 03.11.2020 passed by the Authority whereby the Complaint No.85 of 2020 filed by the respondent/allottee was disposed of with the following directions:

11. Hence, the authority hereby pass the following order and issue directions under Section 34(f) of the Act.

- i. The respondent shall pay the interest of the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 08.08.2012 till the date of actual offer of possession.*
- ii. The respondent is directed to handover the physical possession of the unit to the complainant within one month.*
- iii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payments of interest on or before 10th of each subsequent month.*

Appeals No.730 and 803 of 2022

- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- v. The respondent shall not charge anything from the complainant which is not part of the plot buyer's agreement.*
- vi. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @ 9.30 % p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.*

12. The authority has decided to take suo-moto cognizance against the promoter for not getting the project registered and for that separate proceeding will be initiated under the Act. The registration branch is directed to take necessary action in this regard against the respondent. A copy of this order be endorsed to the registration branch.

13. Complaint stands disposed of.

14. File be consigned to registry.”

3. As per averment of the respondent- allottee in the complaint, Mr. Amrish Kohli (first allottee) had booked a plot admeasuring 240 sq. yards for total sale consideration of Rs.43,56,000/- which includes BSP, Car Parking, IFMS, Club Membership, PLC Etc. The Building Buyer's Agreement (for short, BBA) was executed between Amrish Kohli (first allottee) and M/s Vatika Pvt. Ltd. on

08.08.2009. As per Clause 10 of the Agreement the date of possession is 3 years from the date of execution of the Agreement, which comes out to be 08.08.2013. Thereafter, Mr. Rajiv Chaudhary purchased this plot and on 18.08.2011, the respondent-Vikram Yadav purchased this plot and got his name endorsed in BBA with the consent and permission of the respondent.

4. Appellant submitted that he has made a payment of Rs.25,92,000/- to the respondent vide different cheques on different dates.

5. Since the possession of the plot was not being handed over, therefore, the respondent-allottee filed the complaint before the Authority seeking possession and delay possession interest @ 18% per annum from the due date of delivery of possession till the actual handing over of the possession.

6. Appellant itself or through its counsel did not make themselves present during the various hearing and, therefore, the Authority passed the ex-parte impugned order. The operative part of which has already been reproduced in the opening paragraph of this order.

7. We have heard, learned counsel for the parties and have carefully examined the record.

8. At the outset, learned counsel for the appellant/promoter submits that Mr. Amrish Kohli and Mrs. Ekta Kohli (herein referred to as 'First Allottees') learned about the project launched by the Appellant titled as 'Vatika India Next' situated at Sector 81, 82A, 83, 84 & 85; Gurgaon and approached the Appellant to know the details of the said project.

9. He stated that in the year 2009, the first allottees booked a Plot for a total sale consideration of Rs. 43,56,000/- (Rupees Forty Three Lakhs and Fifty Six Thousand Only) in the aforesaid project.

10. It was further stated that on 08.08.2009, BBA was executed between the Appellant and the Respondent for the Plot bearing no. 297, Block C, admeasuring to 240 Sq. yards. That as per the agreement the possession of the plot was proposed to be handed over within an estimated period 36 (Thirty Six) months from the date of execution of the agreement but the same was subject to the midway hindrances which were beyond the control of the Appellant.

11. It was submitted that as per the agreement so signed and acknowledged the Respondent were aware of the fact that the possession of the plot was subject to the

reasons beyond the control of the Appellant and was also linked to the timely payments made by the Respondent towards the agreed sale consideration.

12. He further submits that in around the year 2010, the First Allottee either on account of inability in paying the instalments or due to the reasons best known to them decided to sell and endorsed the said Plot in the name of Mr. Rajeev Chaudhary (second allottee). Thereafter, the second allottee sold the plot to Mr. Vikram Yadav, respondent herein, and the appellant endorsed the said Plot in the name of the respondent vide Welcome Letter dated 28.09.2011.

13. He submitted that for the reasons beyond the control of the appellant, it was constraint to re-allot the plot allotted to the respondent and through re-allotment letter dated 20.11.2013, the appellant allotted a new plot bearing number 3/B-3.2 admeasuring 240 yd.² at Sector 82 A, Gurugram in the name of respondent on 8.10.2013. Thereafter, on 21.11.2013, an Addendum to the Agreement was executed between the Appellant and the Respondent for the Re-Allotted plot. The Respondent signed the said addendum on his own will and consent without any demur. The Respondent was well aware of

Appeals No.730 and 803 of 2022

the said re-allocation and agreed to sign over the addendum after being fully satisfied with the present shifting without any protest or demur. However, the Respondent concealed this fact from the learned Authority and got the impugned order for the previously allotted plot.

14. It was further submitted that in spite of being aware of the payment obligation the Respondent has only paid a partial amount out of the total sale consideration. It is matter of fact, that the Respondent has merely paid an amount of Rs. 25,92,000/- (Rupees Twenty Five Lacs Ninety Two Thousand Only) against the total sale consideration of Rs. 43,90,652.80/- (Rupees Forty Three Lacs Ninety Thousand Six Hundred Fifty Two and Eighty Paise only). And, since the starting it is the Appellant who is forced to run behind the Respondent for the payment of the respective plot in the said project.

15. It was further contended that that subsequent to the allotment of the said plot to the Respondent, the Appellant Company was facing umpteen road blocks in development works in projects in its licensed lands comprised of the Township owing to the initiation of the GAIL Corridor which passes through the same. The

concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /Group Housing/Commercial/Institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct High Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans. Owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the Appellant Company, Company was unable to execute and carry out all the necessary work for the completion of the said Project. These subsequent developments have repeatedly marred and adversely impacted the progress of the Company's projects. To further add to the woes of the Appellant, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorized occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the Appellant have resulted in the Appellant Company being unable to deliver the plot.

Appeals No.730 and 803 of 2022

16. He asserted that due to reasons mentioned above and other unforeseen circumstances, the Appellant could not handover the possession of the plot of the Respondent and offered the Respondent either to take alternative plot or refund along with interest.

17. It was further contended that the reply to the complaint filed by the Respondent before the Ld. Authority could not be filed by the Appellant due to restrictions of Covid-19 and even the matter was adjourned in all the hearings (06.02.2020, 25.03.2020, 08.05.2020, 28.07.2020 and 15.09.2020) before 03.11.2020 on which the impugned order was passed. It is pertinent to note that the complaint filed by the Respondent was listed for first effective hearing on 03.11.2020, however, by the time the counsel for the Appellant could attend the hearing, the Ld. Authority had proceeded to pass an ex-parte order in favor of the Respondent directing the Appellant to handover the possession of the plot in question along with interest at the rate of 9.30% p.a. from 08.08.2012, till the actual date of offer for possession.

18. He submitted that the Respondent has intentionally concealed the material facts before the Ld.

Appeals No.730 and 803 of 2022

Authority that the plot for which the possession is being sought has been changed vide Addendum to the Agreement dated 21.11.2013 and misled the Ld. Authority to get the relief of possession for Plot bearing no. 297, Block C, admeasuring to 240 Sq. yards. Further, the Respondent also concealed the fact before the Ld. Authority that the plot allotted to the Respondent vide addendum dated 21.11.2013 is not available due to various reasons as apprised to him by the Appellant and did not disclose before the Authority that the Appellant had offered him alternate plot or refund along with interest. Thereafter, with an intention to put undue pressure upon the Appellant the Respondent has also filed an Execution Petition before the Ld. Authority on 05.03.2021; seeking for the actual possession of the plot in question along with delay interest. It is pertinent to mention herein that the Appellant in the execution proceedings as well has submitted an affidavit stating that the plots allotted to the Respondent is not available with the Appellant due to reasons beyond the control of the Appellant.

19. He submitted that during the Execution proceedings the accounts of the Appellant got freezed and

an amount of Rs.25,92,000/- (Rupees Twenty Five Lakhs Ninety Two Thousand Only) has been recovered by the Respondent till date.

20. With these contentions, it was contended by the learned counsel of the appellant that the present appeal may be allowed and the impugned order dated 03.11.2020 may be set aside.

21. Per contra, learned counsel for the respondent/allottee contended that the impugned order dated 03.11.2020 passed by the learned Authority is correct, just and fair and is as per the Act, Rules and Regulations and prayed for dismissal of the appeal.

22. We have duly considered the aforesaid contentions of both the parties.

23. The undisputed facts of case are that the first allottee, Mr. Amrish Kohli and Mrs. Ekta Kohli, booked a plot in the year 2009 in the project of the Appellant 'Vatika-India-Next', situated at Sector 81, 82A, 83, 84, 85 Gurugram for a total sale consideration of Rs. 43,56,000/- which includes BSP, Car Parking, IFMS, Club Membership, PLC etc. A plot buyer agreement was executed between the appellant and the first allottee on 8th August 2009 for a plot bearing number 297, block C,

Appeals No.730 and 803 of 2022

admiring 240 sq. yards in the above said project. As per the said agreement, the possession of the plot was to be handed over to the respondent allottee within a period of 36 months from the date of execution of the agreement. In the year 2010, the first allottee, sold the plot to Mr. Rajiv Choudhury, the second allottee, and the appellant endorsed the said plot in the name of the second allottee on 07.09.2010. The second allottee sold the plot to Mr. Vikram Yadav, the respondent herein, and the appellant endorsed the said plot in the name of the respondent on 12.08.2011.

24. The appellant is contesting the impugned order on the ground that for the reasons beyond its control, it was constraint to re-allot the plot allotted to the respondent and through re-allotment letter dated 08.10.2013, the appellant allotted a new plot bearing number 3/B-3.2 admeasuring 240 sq. yards at Sector 82 A, Gurugram in the name of respondent. Thereafter, on 21.11.2013, an addendum to the agreement was executed between the appellant and the respondent for the reallotted plot. This fact, the respondent concealed from the Authority. It is admitted by the appellant that the respondent has paid an amount of Rs.25,92,000/- against

Appeals No.730 and 803 of 2022

the total sale considerations of Rs 43,90,652.80. It is also claimed by the appellant that during execution proceedings the accounts of the appellant got freezed and an amount of Rs.25,92,00/- has been recovered by respondent till date. The appellant has stated that it is ready to refund the amount paid by the allottee along with prescribed rate of interest. It is also stated that the appellant is unable to hand over the possession even of the re-allotted plot to the respondent allottee as subsequent to allotment/re-allotment of plot, the appellant has to realign the entire project due to GAIL Corridor and non-shifting of defunct High Tension lines.

25. The Appellant has given a lengthy explanation to claim that it cannot hand over the re-allotted plot to the respondent due to the realignment of the project caused by the GAIL Corridor and the failure to relocate defunct High Tension lines and certain other reasons beyond its control. However, it has not provided any explanation as to how the respondent's plot has disappeared. It seems like the appellant is making this claim to avoid their responsibility of handing over the plot to the respondent. If the plot allotted to the respondent indeed vanished due to the realignment, then it was the appellant's duty to

Appeals No.730 and 803 of 2022

promptly offer the best possible alternative plot suitable for the respondent. From the available information, it appears that the appellant hasn't made any effort to find such a plot for the respondent. Moreover, the appellant never informed the respondent about their inability to deliver the possession of the unit until the respondent filed an execution. The respondent has already made sufficient payment towards the total sale price, and the plot prices have significantly increased since then. There is no evidence indicating that the appellant has attempted to adequately compensate the respondent for their failure to provide possession of the allotted unit. It is unfair to expect the respondent to bear the consequences of the appellant's inability to deliver the plot. Legally, the appellant is obligated to hand over possession of the allotted or reallocated plot to the respondent.

26. Another contention raised by the appellant is that the impugned order passed by the Authority is an Ex-Parte order, and the appellant was not afforded any opportunity to present its defence. The appellant, in its appeal, specifically stated in paragraph 'xvii' that the case came up for hearings before the authority on 06.02.2020, 25.03.2020, 08.05.2020, 28.07.2020, and 15.09.2020.

Appeals No.730 and 803 of 2022

Ultimately, the matter was heard on 03.11.2020, and the impugned order was rendered Ex-Parte on the said date as neither the appellant nor its counsel were present during the hearing. It is essential to note that the appellant was fully aware that the case concerning the subject matter was going on before the authority and appellant had ample opportunities to present its defence. Furthermore, the sole defence put forth by the appellant, concerning the unavailability of the allotted or reallocated plot, has been asserted in this appeal, and the matter is currently being determined on its merits. Therefore, remitting the matter back to the authority for a fresh adjudication would serve no purpose but will only cause delay in delivery of justice to the parties.

27. No other point was argued before us by learned counsel for the parties.

28. Consequently, we find no merit in the present appeal filed by the appellant/promoter and is, therefore, dismissed and for the similar reasons Appeal no.803 of 2022 is also dismissed.

29. The amount of Rs.24,68,678/- deposited by the appellant/promoter with this Tribunal as pre-deposit to comply with the provisions of proviso to Section 43(5) of

Appeals No.730 and 803 of 2022

the Act, along with interest accrued thereon, be sent to the Authority for disbursement to the respondent- allottee as per the aforesaid observations, the excess be refunded to the appellant, subject to tax liability, if any, accordance to law.

30. No order as to costs.

31. Copy of this judgment be communicated to both the parties/counsel for the parties and Haryana Real Estate Regulatory Authority, Gurugram.

32. File be consigned to the record.

Announced:
July 28, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

Manoj Rana